IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 609 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANIF YAKUB CHHIPA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 609 of 2002

MR MR PRAJAPATI for Petitioner No. 1

MR HR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI APP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/10/2002

ORAL JUDGEMENT

The present petition is filed by the petitioner against the orders dtd. July, 2002 passed by the Deputy

Secretary, Home Department - respondent No.1, in appeal, confirming the externment order dtd.10-12/12/2001 passed by the Sub-Divisional Magistrate, Bharuch - Respondent No.2 in Externment Case No.20 of 2001 against the externee petitioner.

2. Heard the learned counsel for the respective parties.

3. Mr.MR Prajapati, learned counsel for the petitioner has submitted that the externing authority has issued show cause notice to the petitioner on 10/9/2001 asking the petitioner to show cause why the petitioner should not be externed. The learned counsel for the petitioner has further submitted that thereafter, the detaining authority passed the impugned externment order on 10-12/12/2001 externing the petitioner from Bharuch District for a period of one year, illegally and without any cogent and convincing evidence which has been confirmed by the appellate authority in appeal mechanically. The learned counsel for the petitioner has further submitted that for passing the impugned externment order, the externing authority has relied upon five offences registered against the petitioner. He has further submitted that the alleged offences registered against the petitioner are individual and limited one and restricted to a particular person, and therefore, there is no reason for externing the petitioner. Learned counsel for the petitioner has drawn my attention towards the show cause notice and impugned order of externment and submitted that the show cause notice issued by the externing authority is general and vague as the externing authority has not mentioned the date, time and place of operation of the alleged activity. In support of his argument, he has relied upon the decision of this Court rendered in the case of DEFER RAHMAN ZAFAR VS. STATE OF GUJARAT AND ORS., reported in 1999(1) GLH 425. Head Note "A" of the said judgement is as under :-

> "A" Bombay Police Act, 1951 - Ss.56 and 59(1)
> not mentioned in show cause notice - Renders show-cause notice vague and proceedings invalid Offences shown in order, not mentioned in show cause notice - Renders the order of externment violative of principles of natural justice and also suffering from vice of non-application of mind.

Submitting accordingly, learned counsel for the petitioner has submitted that in the facts and circumstances of the case, the impugned order of

externment is required to be quashed and set aside.

4. Having heard the arguments of the learned counsel for the respective parties and considering the facts of the present case and ratio laid down by this court in the aforesaid judgement relied upon by the learned counsel for the petitioner, it is clear that the notice is general and vague and violative of principles of natural justice and also suffering from the vice of non-application of mind and hence the impugned order of externment is required to be quashed and set aside.

5. For the foregoing reasons, the petition is allowed. The impugned externment order dtd. July, 2002 passed by the Deputy Secretary, Home Department, in appeal, confirming the externment order dtd.10-12/12/2001 passed by the Sub-Divisional Magistrate, Bharuch respondent NO.2 in Externment Case No.20 of 2001 against the externee - petitioner namely Hanif Yakub Chhipais hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(R.P. DHOLAKIA, J.)

Rafik